

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of	)	
Lina Strand Backman	)	Group Art Unit: 3627
Application No.: 10/667,449	)	Examiner: Paul Danneman
Filed: September 23, 2003	)	Appeal No.: _____
For: METHOD AND APPARATUSES	)	
FOR INFORMING, SURVEYING	)	
AND MARKETING TO	)	
POTENTIAL CUSTOMERS	)	

**APPEAL BRIEF**

**Mail Stop APPEAL BRIEF - PATENTS**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This appeal is from the decision of the Primary Examiner dated June 13, 2008 finally rejecting claims 1-20, which are reproduced as the Claims Appendix of this brief.

- ☐ A check covering the ☐ \$ 270 ☐ \$ 540 Government fee is filed herewith.
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I. Real Party in Interest

SCA Hygiene Products AB is the real party in interest, and is the assignee of Application No. 10/667,449.

II. Related Appeals and Interferences

The Appellant legal representative, or assignee, does not know of any other appeal or interferences which will affect or be directly affected by or have bearing on the Board's decision in the pending appeal.

III. Status of Claims

Claims 1-20 are pending and are presently under final rejection.

IV. Status of Amendments

No amendments have been filed, and in particular none have been filed subsequent to the final Office action of June 13, 2008.

V. Summary Claimed Subject Matter

The disclosed methods in the present application include processes for educating or informing, surveying of and marketing to people about a new product by morphing characteristics of a known product to more closely resemble another known product in order to visualize features, characteristics, functions and advantages of a new product represented in an intermediate visual depiction created as a result of the morphing. (Abstract)<sup>1</sup>

For example, a first known product can be a feminine sanitary napkin, such as shown in Fig. 6a, and a second known product can be a tampon, such as shown in Fig. 6g. [0052]. Figs. 6b-6f show intermediate presentations where characteristics

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<sup>1</sup> For the convenience of the Board, citations will be to the published version of the present application, U.S. Published patent Application No. 2005/0065854.

from the sanitary napkin and the tampon are morphed together in a single product, for example an intralabial sanitary napkin, such as shown in Fig. 6f. Id. In this way, women can see the advantages of the external napkin but understand how it can stay in the right location but without the intrusion of a tampon. In other words, potential consumers can more readily understand the attributes of the new product as an evolution of familiar products, in this non-limiting example. Id.

A. Background

Providing information to people is an essential component to society. Advertising by definition is the conveyance of information regarding products, services or ideas in a format to educate, inform and persuade a perspective consumer about them. [0004]. An inherent problem with advertising is that the target audience often has preconceived notions about various characteristics of a product, service, process or idea, and changing these notions can be difficult. [0005] Further, language barriers can create additional difficulties in persuading individuals as to the merits of a new product, service or process. [0006]

These problems exist in the area of feminine hygiene products, for example. [0007]. If a product involves very imaginative, visionary products such as intralabial sanitary towels or napkins, it might be difficult to convince a prospective customer that she should like the product. Id. One example is if a prospective consumer is shown a very small sanitary towel or napkin, the effect can be that she cannot focus on the benefits of the product, such as convenience, discretion and comfort. [0008] Instead, some prospective consumers tend to believe that it is not possible to develop such a small product with enough capacity, despite assurances to the contrary. Id.

B. Summary of the Invention

One way to convince a potential consumer of the merits of a new product, be it a new physical product, process, routine or material, is to visually show how the product emerges out concepts and designs, aspects, or approaches of known products on the market. [0009]. The know products can be "morphed" by a series or continuum of visual presentations, whether still images, moving images, prototypes or models, that show the transformation of a known product into the new product that highlights how the desirable characteristics, functions, etc. are found in the new

product, even though it might look much different. In this instance, morphing can be defined as the visual transformation of one image into another by gradually distorting the first image so as to move certain chosen points to the position of corresponding points in the second image, or simply a series of images that in combination shows the transformation of the appearance of a first object to look more like another object. Id. The visual transformation can be through animation or other moving type images, but more broadly can include a relatively small number of still images that show stages of transformation between known product(s) and the new product. Id.

In this way, a consumer can visually understand the attributes of the new product as well as the advantages gained, thus potentially gaining acceptance and approval of the new product. [0010].

C. Independent Claims 1, 5, 10 and 17

1. Relationship of claims

Claim 1 pertains to a process of informing potential consumers of a new product and is detailed for instance in [0026] to [0032]. Claims 5, 10 and 17 build on the features of claim 1 to recite a survey process (claims 5-9, detailed in [0033]-[0041]), a marketing process (claims 10-16, detailed in [0042]-[0047]), and an advertisement (claims 17-20, also detailed in [0042]-[0047]).

2. Claims 1-4

In this first set of claims, a process of informing potential consumers of a new product is recited. In no particular order, the steps include presenting to a potential consumer a visual presentation of a first, known product having at least one function and at least one characteristic capable of visualization [0027, step 101, Fig. 1]; presenting to said potential consumer visual presentation of a second, known product having at least one known function similar to said at least one function of said first known product and at least one characteristic capable of visualization [0028, step 102, Fig. 1]; and presenting to said potential consumer one or more intermediate visual presentations of at least one of the first and second products by changing the appearance of said at least one characteristic of said first product to more closely resemble said at least one characteristic of said second product, one of said intermediate visual presentations being an visual presentation of said new product [0029, step 103, Fig. 1].

Dependent claim 2 recites presenting to said potential consumer a plurality of intermediate visual presentations of products changing the appearance of said at least one characteristic of said second product to more closely resemble said at least one characteristic of said first product, one of said intermediate visual presentations being visual presentation of said new product [0029, step 103, Fig. 1]. As recited in claim 3, the plurality of intermediate visual presentations can be still images, and/or at least one of moving images and animations [0032].

### 3. Claims 5-9

Claim 5 recites a survey process as described in paragraphs [0033]-[0041]. It includes identifying a panel of people [0034, Step 201, Fig. 2] and informing people of said panel of a new product [0035, Step 202, Fig. 2], the informing step including in no particular order: presenting to a panelist a visual presentation of a first, known product having at least one function and at least one characteristic capable of visualization [0035, Step 202a, Fig. 2]; presenting to said panelist visual presentation of a second, known product having at least one known function similar to said at least one function of said first known product and at least one characteristic capable of visualization [0035, Step 202b, Fig. 2]; and presenting to said panelist a plurality of intermediate visual presentations of products changing the appearance of said at least one characteristic of said first product to more closely resemble said at least one characteristic of said second product. [0035, Step 202c, Fig. 2].

Claim 5 further recites questioning the panelist about the impressions the panelist has of the products presented in said plurality of intermediate visual presentations, wherein identifying a panel of people can be before or after informing people of said panel. [0036, Step 203, Fig. 2].

As recited in claim 6, the survey process can include questioning a panelist about impressions the panelist has of products, among products presented in said plurality of intermediate visual presentations, said panelist not having been previously informed of features or aspects of the products. [0038].

As recited in claim 7, the survey process can include presenting to said panelist a plurality of intermediate visual presentations of products changing the appearance of said at least one characteristic of said second product to more closely

resemble said at least one characteristic of said first product [0038], which can be still images [0039, claim 8], or at least one of moving images and animations [0039, claim 9].

#### 4. Claims 10-15

Claim 10 recites a process of marketing a new product to potential customers. [0042]-[0047]. It includes obtaining attention of a potential customer [0043, Step 301, Fig. 3]; presenting to said potential consumer a visual presentation of a first, known product having at least one function and at least one characteristic capable of visualization [0043, Step 302, Fig. 3]; presenting to said potential consumer an visual presentation of a second, known product having at least one known function substantially similar to said at least one function of said first known product and at least one characteristic capable of visualization [0043, Step 303, Fig. 3]; presenting to said potential consumer a plurality of intermediate visual presentations of products changing the appearance of said at least one characteristic of said first product to more closely resemble said at least one characteristic of said second product, one of said intermediate visual presentations being an visual presentation of said new product; and informing the potential customer of a source of said new product [0043, Step 304, Fig. 3], wherein the presenting and informing steps can be in any sequence. [0028, original claim 10].

As recited in claim 11, this process can include presenting to said potential consumer a plurality of intermediate visual presentations of products changing the appearance of said at least one characteristic of said second product to more closely resemble said at least one characteristic of said first product, one of said intermediate visual presentations being an visual presentation of said new product [0045]. As with the other claim sets, the intermediate images of products can be still images [0046, claim 12], and/or at least one of moving images and animations [0046, claim 13].

#### 5. Claims 14-16

Claims 14-16 recite computer readable medium having embodied thereon a computer program for carrying out the method of claim 1, 5 and 10, respectively. [0054].

6. Claims 17-20

Claim 17 recites an advertisement for a new product [0042]-[0047], comprising: a visual presentation of a first, known product having at least one function and at least one characteristic capable of visualization [0043 and 0047, Step 302, Fig. 3]; a visual presentation of a second, known product having at least one known function substantially similar to said at least one function of said first known product and at least one characteristic capable of visualization [0043 and 0047, Step 303, Fig. 3]; a plurality of intermediate visual presentations of products changing the appearance of said at least one characteristic of said first product to more closely resemble said at least one characteristic of said second product, one of said intermediate visual presentations being an visual presentation of said new product; and identification of a source of said new product [0043 and 0047, Step 304, Fig. 3].

Dependent claim 18 recites that a plurality of intermediate visual presentations of products changing the appearance of said at least one characteristic of said second product to more closely resemble said at least one characteristic of said first product can be provided, one of said intermediate visual presentations being an visual presentation of said new product [0045]. As mentioned before, the plurality of intermediate visual presentations of products can be still images [0046, claim 19] and/or at least one of moving images and animations [0046, claim 20].

VI. Grounds of Rejection to be Reviewed on Appeal

A. Claims 1, 2, 5-7, 10, 11 and 14-18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Jain et al ("Jain", U.S. Patent Application Publication No. 2003/0195793).

B. Claims 3, 4, 8, 9, 12, 13, 19 and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Jain in view of Zawlinski ("Zawlinski", U.S. Patent No. 5,676,138).



## VII. Argument

### A. Jain Fails to Meet the Recitations of Claims 1, 2, 5-7, 10, 11 and 14-18

#### 1. Independent Claims 1, 5, 10 and 17

##### a. Summary of Differences between Present Invention and Jain

Jain pertains to the design and analysis of marketing research activity and data. Jain discloses a system where a merchant specifies one or more objectives to be achieved by the system. Examples of some of these objectives are a product preference test, new product acceptance and comparisons with other products. [0064]. The system deploys a research approach design that is adaptable to each customer depending on what information is received from the customer and what is missing. Specifically, the number and selection of participants may be adjusted, or the research design itself may be adjusted. The research approach may include a product comparison. [0173]. Modifying the research design includes modifying the experiment, the survey questionnaire or campaign parameters to suit an individual customer. Id. In one instance, the research design may focus on obtaining feedback or comparison with another product from a customer who has already purchased a product. Id. Thus, the research design refers to a method of obtaining information from a customer. It does not involve products, and in particular does not involve a "first product", a "second product" or one or more "intermediate visual presentations" that represent a changed appearance of the first or second product (or both) wherein one of the intermediate images is that of a new product.

##### b. Claimed Features Absent from Applied Art

Independent Claims 1, 5, 10 and 17 each provide for, *inter alia*, presentation of a first, known product having at least one function and at least one characteristic capable of visualization, presentation of a second, known product having at least one known function similar to the at least one function of the first known product and at least one characteristic capable of visualization. The claims further recite that a potential customer is presented with "one or more intermediate visual presentations of at least one of the first and second products by changing the appearance of said at least one characteristic of said first product to more closely resemble said at least one characteristic of said second product." By the undersigned count, in the claims

there are three products and more than three images, each of the products having similar functions and similar at least one characteristic capable of visualization, nor does the applied art teach "one or more intermediate visual presentations of at least one of the first and second products by changing the appearance of said at least one characteristic of said first product to more closely resemble said at least one characteristic of said second product" as recited in claims 1, 5, 10 and 17, nor does the applied art teach "one of said intermediate visual presentations being an visual presentation of said new product" as recited in various forms in claims 1, 10 and 17. Jain, neither alone nor modified as proposed by the Examiner, discloses these claimed features in combination. These features are simply missing from the applied art. As such, a prima facie case of unpatentability has not been established. All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). To establish prima facie obviousness of a claimed invention, all the claim features must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). In *KSR*, the Supreme Court particularly emphasized "the need for caution in granting a patent based on the combination of elements found in the prior art." *KSR International Co. v. Teleflex Inc. (KSR)*, 550 U.S. \_\_\_, \_\_\_, 82 USPQ2d 1385, 1395 (2007). It is respectfully submitted that since the elements have not been found in the prior art, *KSR* does not apply, but if it did, the Examiner still has not provided reasons for the modification. In *KSR*, the Supreme Court particularly emphasized "the need for caution in granting a patent based on the combination of elements found in the prior art," *Id.* at \_\_\_, 82 USPQ2d at 1395.

c. No Reason to Modify Prior Art Supplied

As noted above, the dynamic research approach design of Jain is essentially a survey that is adaptable or customizable to a specific customer or group of customers. The research approach is adaptable/customizable by taking into consideration a customer's previous purchase history, previous responses to research designs, and other available data. The approach identifies missing information for each customer, and then proposes asking the customer questions to fill in the missing information. See Table 2. In some cases, the feedback sought by

the research approach will pertain to a comparison of products. The passage relied upon by the Examiner states:

[0173] The approach is personalized (3.5) for the selected set of target customers. Personalization of research approach refers to the modification of the research design, i.e., the experiment, the survey questionnaire or campaign parameters to suit an individual customer, such that maximum information value with minimal inputs is obtained from the customer. It uses customer's previous purchase history, previous responses to research designs, click-stream information and any other available data for the purpose. For example, if the customer has already purchased the product, the research approach would remove the question about whether he/she has made a purchase or not. Instead the research design might focus on feedback, comparison with other products etc., depending on the merchant's objective.

As the Official Action correctly notes, Jain does not disclose presenting visual images of the products. However, the Official Action concludes that it would have been obvious to a person of ordinary skill in the art to provide the customers with models, visual images, multi-media images and similar tangible attributes which the target group can easily grasp the differences in product attributes presented by the research approach.

In the final Office action (bridging pages 2 and 3), the Examiner suggests "it would have been obvious, at the time of the invention, to one of ordinary skill in the art that product comparisons as disclosed by Jain are conducted by providing the target group (focus group) with models, visual images, multimedia images and similar tangible attributes which the target group can easily grasp the differences in product attributes presented by the marketing research group. [The] Examiner maintains that the independent claims and the dependent claims are properly rejected..."

Thus, the Examiner has not addresses and the applied art does not teach or suggest, and the neither the Examiner nor the applied art or provide reasons to modify the prior art to "presenting to said potential consumer one or more **intermediate visual presentations of at least one of the first and second products by changing the appearance of said at least one characteristic of said first product to more closely resemble said at least one characteristic of said second product** (as recited in claims 1, 5, 10 and 17), **one of said**

**intermediate visual presentations being an visual presentation of said new product,”** as recited in claim 1 and similar recitations in independent claims 10 and 17. As said before, the applied prior art simply does not include this combination of recitation, and the Examiner has not squarely addressed them. Hence, the rejection fails the *KSR* test.

2. Dependent Claims 2, 6, 7, 11 and 14-16 and 18

In fact, as characterized by the Examiner Jain does not even disclose visual presentations of the products (through product comparisons with images are now common enough), it can hardly be said that the applied art teaches or would reasonably convey or make obvious to an ordinary artisan the use of intermediate images as recited in the pending independent claims, let alone still, moving or animations of these intermediate visual presentations as recited in dependent claims 3, 4, 8, 9, 12, 13, 19 or 20. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Nor is Jain concerned with presenting an intermediate visual presentation of a new products, where the new product has at least one characteristic of the first known product changed to more closely resemble the at least one characteristic of the second product, as recited in claims 2, 11, and 18. Paragraph [0174] briefly discusses that advertisements may have different values of attributes. However, these attributes are based only on a first product. See also Table 2. There is no disclosure that the attributes are changed to more closely resemble attributes of a second product. In other words, an advertisement highlighting attributes for which feedback from Joe (in Table 2) is sought, is based solely on the product for which the importance of the two attributes is now known, i.e. the advertisement is based on a single product. Because the proposed modification of Jain still fails to disclose an intermediate visual presentation together with the other features recited in independent claims 1, 5, 10 and 17, and is still further removed from the recitations of dependent claims 2, 11 and 18, withdrawal of this rejection is respectfully requested.

Applicant appreciates the Examiner's citation of specific passages in the references that are believed to be relevant. However, it remains unclear precisely

which features are considered to correspond to the claimed features. Specifically, it is not clear which features of Jain are considered to correspond to the claimed visual presentation of the new product, or the disclosure that meets the recitation of “presenting to said potential consumer one or more intermediate visual presentations of at least one of the first and second products by changing the appearance of said at least one characteristic of said first product to more closely resemble said at least one characteristic of said second product, one of said intermediate visual presentations being an visual presentation of said new product.” Hence, for the reasons given above, these rejections should not be sustained.

#### B. Zawlinski Does Not Cure the Deficiencies of Jain

Zawlinski is cited for allegedly teaching “a computerized multimedia system for measuring, analyzing, storing, and displaying emotional responses elicited by humans when resented a stimulus such as a television commercial (acknowledging it does not involve still images), but suggests that “one of ordinary skill to be motivated to combine Jain’s marketing research activity with Zawilinski’s multimedia stimuli and response analyzer to obtain a better indicator of a customer’s response to various products or their features.” But even assuming *arguendo* this was a proper combinations, this still would not result in a combination where “plurality of intermediate visual presentations of products are still images” and/or “are at least one of moving images and animations. “ as recited in claims 4, 5 8, 9, 19 and 20, particularly of still images of these “intermediate visual presentations of products changing the appearance of said at least one characteristic of said first product to more closely resemble said at least one characteristic of said second product” (Claim 5), particularly where “one of said intermediate visual presentations [is] an visual presentation of said new product “ (claims 1, 10 and 17).

#### VIII. Claims Appendix

See attached Claims Appendix for a copy of the claims involved in the appeal.

IX. Evidence Appendix

See attached Evidence Appendix for copies of evidence relied upon by Appellant.

X. Related Proceedings Appendix

See attached Related Proceedings Appendix for copies of decisions identified in Section II, supra.

Conclusion


For the reasons stated herein, Appellants respectfully submit the rejections of record should not be sustained. Reversal is therefore requested.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Date January 12, 2009

By:

  
Charles F. Wieland III  
Registration No. 33096

P.O. Box 1404  
Alexandria, VA 22313-1404  
703 836 6620

## VIII. CLAIMS APPENDIX

### The Appealed Claims

1. (Original) A process of informing potential consumers of a new product, including in no particular order: presenting to a potential consumer a visual presentation of a first, known product having at least one function and at least one characteristic capable of visualization; presenting to said potential consumer visual presentation of a second, known product having at least one known function similar to said at least one function of said first known product and at least one characteristic capable of visualization; and presenting to said potential consumer one or more intermediate visual presentations of at least one of the first and second products by changing the appearance of said at least one characteristic of said first product to more closely resemble said at least one characteristic of said second product, one of said intermediate visual presentations being an visual presentation of said new product.

2. (Original) A process in accordance with claim 1, further comprising presenting to said potential consumer a plurality of intermediate visual presentations of products changing the appearance of said at least one characteristic of said second product to more closely resemble said at least one characteristic of said first product, one of said intermediate visual presentations being visual presentation of said new product.

3. (Original) A process in accordance with claim 1, wherein said plurality of intermediate visual presentations of products are still images.

4. (Original) A process in accordance with claim 1, wherein said plurality of intermediate visual presentations of products are at least one of moving images and animations.

5. (Original) A survey process, comprising: identifying a panel of people; informing people of said panel of a new product, the informing step including in no particular order: presenting to a panelist a visual presentation of a first, known

product having at least one function and at least one characteristic capable of visualization; presenting to said panelist visual presentation of a second, known product having at least one known function similar to said at least one function of said first known product and at least one characteristic capable of visualization; and presenting to said panelist a plurality of intermediate visual presentations of products changing the appearance of said at least one characteristic of said first product to more closely resemble said at least one characteristic of said second product; and questioning the panelist about the impressions the panelist has of the products presented in said plurality of intermediate visual presentations, wherein identifying a panel of people can be before or after informing people of said panel.

6. (Original) A survey process according to claim 5, further comprising questioning a panelist about impressions the panelist has of products, among products presented in said plurality of intermediate visual presentations, said panelist not having been previously informed of features or aspects of the products.

7. (Original) A survey process in accordance with claim 5, further comprising presenting to said panelist a plurality of intermediate visual presentations of products changing the appearance of said at least one characteristic of said second product to more closely resemble said at least one characteristic of said first product.

8. (Original) A process in accordance with claim 5, wherein said plurality of intermediate visual presentations of products are still images.

9. (Original) A process in accordance with claim 5, wherein said plurality of intermediate visual presentations of products are at least one of moving images and animations.

10. (Original) A process of marketing a new product to potential customers, comprising: obtaining attention of a potential customer; presenting to said potential consumer a visual presentation of a first, known product having at least one function and at least one characteristic capable of visualization; presenting to said potential consumer an visual presentation of a second, known product having at



least one known function substantially similar to said at least one function of said first known product and at least one characteristic capable of visualization; presenting to said potential consumer a plurality of intermediate visual presentations of products changing the appearance of said at least one characteristic of said first product to more closely resemble said at least one characteristic of said second product, one of said intermediate visual presentations being an visual presentation of said new product; and informing the potential customer of a source of said new product, wherein the presenting and informing steps can be in any sequence.

11. (Original) A process in accordance with claim 10, further comprising presenting to said potential consumer a plurality of intermediate visual presentations of products changing the appearance of said at least one characteristic of said second product to more closely resemble said at least one characteristic of said first product, one of said intermediate visual presentations being an visual presentation of said new product.

12. (Original) A process in accordance with claim 10, wherein said plurality of intermediate visual presentations of products are still images.

13. (Original) A process in accordance with claim 10, wherein said plurality of intermediate visual presentations of products are at least one of moving images and animations.

14. (Original) A computer readable medium having embodied thereon a computer program for carrying out the method of claim 1.

15. (Original) A computer readable medium having embodied thereon a computer program for carrying out the method of claim 5.

16. (Original) A computer readable medium having embodied thereon a computer program for carrying out the method of claim 10.

17. (Original) An advertisement for a new product, comprising: a visual presentation of a first, known product having at least one function and at least one

characteristic capable of visualization; a visual presentation of a second, known product having at least one known function substantially similar to said at least one function of said first known product and at least one characteristic capable of visualization; a plurality of intermediate visual presentations of products changing the appearance of said at least one characteristic of said first product to more closely resemble said at least one characteristic of said second product, one of said intermediate visual presentations being an visual presentation of said new product; and identification of a source of said new product.

18. (Original) An advertisement in accordance with claim 17, further comprising a plurality of intermediate visual presentations of products changing the appearance of said at least one characteristic of said second product to more closely resemble said at least one characteristic of said first product, one of said intermediate visual presentations being an visual presentation of said new product.

19. (Original) An advertisement in accordance with claim 17, wherein said plurality of intermediate visual presentations of products are still images.

20. (Original) An advertisement in accordance with claim 17, wherein said plurality of intermediate visual presentations of products are at least one of moving images and animations.

## **IX. EVIDENCE APPENDIX**

N/A

## **X. RELATED PROCEEDINGS APPENDIX**

N/A